

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 671 and 495

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 16, 1996

**Sponsored by Assemblymen BAGGER, ROMA and
Assemblywoman VANDERVALK**

1 **AN ACT** concerning medical savings accounts, and revising various
2 parts of the statutory law.

3

4 **BE IT ENACTED** by the *Senate and General Assembly of the State*
5 *of New Jersey*:

6

7 1. (New section) As used in this act:

8 "Account holder" means the individual on whose behalf a medical
9 savings account is opened.

10 "Deduction limitation" means the amount allowable as a deduction
11 to an individual for the tax year for a contribution to a medical savings
12 account.

13 "Director" means the Director of the Division of Taxation.

14 "Eligible expense" means any qualified medical expense of an
15 account holder or the account holder's qualified dependents and may
16 include the purchase of a health benefits plan and the payment of any
17 deductible or copayment on that plan for the first year of the plan for
18 a qualified dependent who has lost eligibility to receive health benefits
19 from the account holder's employer; the expense of purchasing a health
20 benefits plan during any period of continuation coverage required
21 under any federal or State law; the purchase of a qualified long-term
22 health care contract as determined by the Commissioner of Banking
23 and Insurance; and the purchase of a health plan during a period in
24 which the individual is receiving unemployment compensation under
25 any federal or State law. "Eligible expense" includes disbursements
26 from a medical savings account pursuant to a filing for protection by
27 an account holder under Title 11 of the United States Code, 11
28 U.S.C. §101 et seq., and shall not be included in the account holder's
29 gross income for the year of disbursement in determining taxes due
30 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
31 "Eligible expense" does not include the payment of a medical expense

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 that has been or will be otherwise paid, including, but not limited to,
2 medical expenses paid or reimbursed under a policy of motor vehicle
3 insurance, worker's compensation insurance or plans, or an
4 employer-funded health benefits plan.

5 "Health benefits plan" means a hospital and medical expense
6 insurance policy, hospital, medical or health service corporation
7 contract, or health maintenance organization subscriber contract,
8 which policy or contract is delivered or issued for delivery in this
9 State.

10 "Family coverage" means any coverage other than self-only
11 coverage.

12 "Insurer" means any person authorized by the laws of this State to
13 transact the business of accident and health insurance in New Jersey.

14 "Medical savings account" or "account" means a trust created or
15 organized in this State exclusively for the purpose of paying the
16 eligible medical expenses of an account holder or the account holder's
17 qualified dependents or both.

18 "Permitted insurance" includes:

19 (1) Medicare supplemental insurance;

20 (2) insurance if substantially all of the coverage provided under
21 the insurance relates to: liabilities incurred under workers'
22 compensation laws; tort liabilities, liabilities relating to ownership or
23 use of property or other similar liabilities as may be prescribed by
24 regulation;

25 (3) insurance for a specified disease or illness; or

26 (4) insurance paying a fixed amount per day, or other period, of
27 hospitalization.

28 "Qualified dependent" means the spouse of an account holder or
29 the child of an account holder when the child is:

30 (1) under 19 years of age or under 23 years of age and a full-time
31 student at an accredited college or university;

32 (2) not self-sufficient due to mental or physical incapacitation; or

33 (3) legally entitled to the provisions of proper or necessary
34 subsistence, education, medical care or other care necessary for the
35 child' guidance, or well-being and is not otherwise emancipated,
36 self-supporting, married or a member of the armed forces of the
37 United States.

38 "Qualified higher deductible health plan" means a health benefits
39 plan that provides for the payment of covered benefits that exceed the
40 deductible, and is purchased in conjunction with the establishment of
41 a medical savings account. A qualified higher deductible health
42 benefits plan includes a health benefits plan:

43 (1) with an annual deductible of at least \$1,500 and not more than
44 \$2,250, in the case of self-only coverage;

45 (2) with an annual deductible of at least \$3,000 and not more than
46 \$4,500, in the case of family coverage;

1 (3) under which the annual out-of-pocket expenses required to be
2 paid, other than for premiums, for covered benefits does not exceed:
3 \$3,000 for self-only coverage and \$5,000 for family coverage.

4 For any tax year beginning in a calendar year after 1998, the above
5 dollar amounts are increased by an amount equal to the increases
6 authorized pursuant to the Health Insurance Portability and
7 Accountability Act of 1996, Pub.L.104-191, (U.S.C.).

8 A qualified higher deductible health plan does not include a health
9 benefits plan if substantially all of its coverage is "permitted insurance"
10 or coverage for accidents, disability, dental care, vision care, or long-
11 term care.

12 "Trustee" means an insurer; federally or State chartered bank,
13 savings and loan association, savings bank or credit union; or such
14 other person that demonstrates to the satisfaction of the director that
15 the manner in which the account will be managed will be consistent
16 with the requirements of this act and with any applicable requirements
17 of the Health Insurance Portability and Accountability Act of 1996,
18 Pub.L.104-191, (U.S.C.).

19

20 2. (New section) a. There shall be no limitation on the number of
21 medical savings account plans that may be established in this State.

22 b. Every medical savings account plan that is established in the
23 State shall include:

24 (1) The payment into a medical savings account which shall,
25 except in the case of a rollover contribution, when added to previous
26 contributions, equal or exceed:

27 (a) in the case of an individual who has self-only coverage under
28 a qualified higher deductible health plan, 65% of the annual deductible
29 of the qualified higher deductible health plan; or

30 (b) in the case of an individual who has family coverage under a
31 qualified higher deductible health plan, 75% of the annual deductible
32 of the qualified higher deductible health plan;

33 (2) The purchase of a qualified higher deductible health plan; and

34 (3) The appointment of a trustee to administer the medical savings
35 account.

36

37 3. (New section) a. An employer or individual shall designate a
38 trustee to administer the medical savings account at the time the
39 account is opened.

40 b. Each trustee shall send to the account holder, at least annually,
41 a statement setting forth the balance remaining in the account holder's
42 medical savings account and detailing the activity in the account since
43 the last statement was issued.

44 c. When an account holder documents the payment of an eligible
45 expense to the trustee of the account holder's medical savings account,
46 the trustee shall reimburse the account holder from the account for

1 that expense if sufficient funds are available. The reimbursement shall
2 be made within 60 days of the trustee's receipt of the documentation.
3 The trustee shall keep a record of the amounts disbursed from the
4 medical savings account for documented eligible expenses and of the
5 dates on which the expenses were incurred. This record shall be made
6 available to any insurer or other third-party payer providing a health
7 benefits plan to the account holder, for use in determining whether the
8 account holder has met the deductible or other obligation required for
9 the receipt of benefits from the insurer or third-party payer.

10

11 4. Section 6 of P.L.1992, c.161 (C17B:27A-7) is amended to read
12 as follows:

13 6. The board shall establish the policy and contract forms and
14 benefit levels to be made available by all carriers for the policies
15 required to be issued pursuant to section 3 of P.L.1992, c.161
16 (C.17B:27A-4) , which shall include a medical savings account plan
17 that conforms to any applicable federal and State requirements for
18 medical savings accounts, and which shall be established within 60
19 days after the enactment of P.L. , c. (C.)(pending in the
20 Legislature as this bill). The board shall provide the commissioner
21 with an informational filing of the policy and contract forms and
22 benefit levels it establishes.

23 a. the individual health benefits plans established by the board may
24 include cost containment measures such as, but not limited to:
25 utilization review of health care services, including review of medical
26 necessity of hospital and physician services; case management benefit
27 alternatives; selective contracting with hospitals, physicians, and other
28 health care providers; and reasonable benefit differentials applicable to
29 participating and nonparticipating providers; and other managed care
30 provisions.

31 b. An individual health benefits plan offered pursuant to section 3
32 of P.L.1992, c.161 (C.17B:27A-4) shall contain a limitation of no
33 more than 12 months on coverage for preexisting conditions, except
34 that the limitation shall not apply to an individual who has, under a
35 prior group or individual health benefits plan or Medicaid, with no
36 intervening lapse in coverage of more than 30 days, been treated or
37 diagnosed by a physician for a condition under that plan or satisfied a
38 12-month preexisting condition limitation.

39 c. In addition to the five standard individual health benefits plans
40 provided for in section 3 of P.L.1992, c.161 (C.17B:27A-4), the board
41 may develop up to five rider packages. Premium rates for the rider
42 packages shall be determined in accordance with section 8 of
43 P.L.1992, c.161 (C.17B:27A-9).

44 d. After the board's establishment of the individual health benefits
45 plans required pursuant to section 3 of P.L.1992, c.161
46 (C.17B:27A-4), and notwithstanding any law to the contrary, a carrier

1 shall file the policy or contract forms with the board and certify to the
2 board that the health benefits plans to be used by the carrier are in
3 substantial compliance with the provisions in the corresponding board
4 approved plans. The certification shall be signed by the chief
5 executive officer of the carrier. Upon receipt by the board of the
6 certification, the certified plans may be used until the board, after
7 notice and hearing, disapproves their continued use.

8 e. Effective immediately for an individual health benefits plan
9 issued on or after the effective date of P.L.1995, c.316
10 (C.17:48E-35.10 et al.) and effective on the first 12-month anniversary
11 date of an individual health benefits plan in effect on the effective date
12 of P.L.1995, c.316 (C.17:48E-35.10 et al.), the individual health
13 benefits plans required pursuant to section 3 of P.L.1992, c.161
14 (C.17B:27A-4), including any plan offered by a federally qualified
15 health maintenance organization, shall contain benefits for expenses
16 incurred in the following:

17 (1) Screening b by blood lead measurement for lead poisoning for
18 children, including confirmatory blood lead testing as specified by the
19 Department of Health pursuant to section 7 of P.L.1995 , c.316
20 (C.26:2-137.1); and medical evaluation and any necessary medical
21 follow-up and treatment for lead poisoned children.

22 (2) All childhood immunizations as recommended by the Advisory
23 Committee on Immunization Practices of the United States Public
24 Health Service and the Department of Health pursuant to section 7 of
25 P.L.1995, c.316 (C.26:2-137.1). A carrier shall notify its insureds, in
26 writing, of any change in the health care services provided with respect
27 to childhood immunizations and any related changes in premium. Such
28 notification shall be in a form and manner to be determined by the
29 Commissioner of Insurance.

30 The benefits shall be provided to the same extent as for any other
31 medical condition under the health benefits plan, except that no
32 deductible shall be applied for benefits provided pursuant to this
33 section. This section shall apply to all individual health benefits plans
34 in which the carrier has reserved the right to change the premium.
35 (cf: P.L.1995, c.316, s.5)

36

37 5. Section 17 of P.L.1992, c.162 (C.17B:27A-33) is amended to
38 read as follows:

39 17. Subject to the approval of the commissioner, the board shall
40 formulate the five health benefits plans, one of which shall be a
medical savings account plan which shall conform to any applicable
federal and State requirements for medical savings accounts, and
which shall be established within 60 days of the enactment of
P.L. , c. (C.)(pending in the Legislature as this bill), to be made
45 available by small employer carriers in accordance with the provisions
46 of this act, and shall promulgate five standard forms pursuant thereto.

1 The board may establish benefits levels, deductibles and copayments,
2 exclusions, and limitations for such health benefits plans in accordance
3 with the law.

4 The board shall submit the forms so established to the
5 commissioner for his approval. The commissioner shall approve the
6 forms if he finds them to be consistent with the provisions of section
7 3 of P.L.1992, c.162 (C.17B:27A-19). Any form submitted to the
8 commissioner by the board shall be deemed approved if not expressly
9 disapproved in writing within 60 days of its receipt by the
10 commissioner. Such forms may contain, but shall not be limited to, the
11 following provisions:

12 a. Utilization review of health care services, including review of
13 medical necessity of hospital and physician services;

14 b. Managed care systems, including large case management;

15 c. Provision for selective contracting with hospitals, physicians,
16 and other health care providers;

17 d. Reasonable benefits differentials which are applicable to
18 participating and nonparticipating providers;

19 e. Notwithstanding the provisions of section 4 of P.L.1992, c.162
20 (C.17B:27A-20) to the contrary, the board may, from time to time,
21 adjust coinsurance and deductibles;

22 f. Such other provisions which may be quantifiably established to
23 be cost containment devices;

24 g. The department shall publish annually a list of the premiums
25 charged for each of the five small employer health benefits plans and
26 for any rider package by all carriers writing such plans. The
27 department shall also publish the toll free telephone number of each
28 such carrier.

29 (cf: P.L.1993, c.162, s.8)

30

31 6. (New section) No amount deposited into a medical savings
32 account shall be included in gross income as defined in N.J.S.54A:5-1
33 unless such account ceases to be a medical savings account. No
34 amount paid or distributed from a medical savings account which is
35 used exclusively to pay eligible medical expenses of any account
36 holder or the account holder's qualified dependents shall be included
37 in gross income. For purposes of this act, any amount that is a
38 deductible expense pursuant to the Health Insurance Portability and
39 Accountability Act of 1996, Pub.L.104-191, (U.S.C.), shall be
40 deemed to be a deductible expense under this act and any amount that
41 is an excludable expense under the Health Insurance Portability and
42 Accountability Act of 1996, Pub.L.104-191, (U.S.C.), shall be
43 deemed to be an excludable expense under this act.

44 The deduction for medical savings account contributions shall not
45 exceed compensation. In the case of employees, or self-employed
46 individuals, the deduction allowed for contributions to a medical

1 savings account shall not exceed the individual's wages, salaries, tips,
2 and other employee compensation that are attributable to the
3 individual's employment.

4

5 7. (New section) Notwithstanding the provisions of this act to the
6 contrary, with respect to medical savings accounts, no tax payer shall
7 be qualified for a deduction from gross income pursuant to
8 N.J.S.54A:1-1 et seq. unless that tax payer qualifies as an "eligible
9 individual" under the Health Insurance Portability and Accountability
10 Act of 1996, Pub.L.104-191, (U.S.C.).

11

12 8. N.J.S.54A:5-1 is amended to read as follows:

13 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
14 income shall consist of the following categories of income:

15 a. Salaries, wages, tips, fees, commissions, bonuses, and other
16 remuneration received for services rendered whether in cash or in
17 property, including all withdrawals from a medical savings account
18 that are not for eligible expenses as defined in section 1 of P.L. , c.
19 (C.)(pending in the Legislature as this bill).

20 b. Net profits from business. The net income from the operation
21 of a business, profession or other activity after provision for all costs
22 and expenses incurred in the conduct thereof, determined either on a
23 cash or accrual basis in accordance with the method of accounting
24 allowed for federal income tax purposes but without deduction of the
25 amount of:

26 (1) taxes based on income;

27 (2) a civil, civil administrative, or criminal penalty or fine,
28 including a penalty or fine under an administrative consent order,
29 assessed and collected for a violation of a State or federal
30 environmental law, an administrative consent order, or an
31 environmental ordinance or resolution of a local governmental entity,
32 and any interest earned on the penalty or fine, and any economic
33 benefits having accrued to the violator as a result of a violation, which
34 benefits are assessed and recovered in a civil, civil administrative, or
35 criminal action, or pursuant to an administrative consent order. The
36 provisions of this paragraph shall not apply to a penalty or fine
37 assessed or collected for a violation of a State or federal
38 environmental law, or local environmental ordinance or resolution, if
39 the penalty or fine was for a violation that resulted from fire, riot,
40 sabotage, flood, storm event, natural cause, or other act of God
41 beyond the reasonable control of the violator, or caused by an act or
42 omission of a person who was outside the reasonable control of the
43 violator; and

44 (3) treble damages paid to the Department of Environmental
45 Protection and Energy pursuant to subsection a. of section 7 of
46 P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department

1 in removing, or arranging for the removal of, an unauthorized
2 discharge upon the failure of the discharger to comply with a directive
3 from the department to remove, or arrange for the removal of, a
4 discharge.

5 c. Net gains or income from disposition of property. Net gains or
6 net income, less net losses, derived from the sale, exchange or other
7 disposition of property, including real or personal, whether tangible or
8 intangible as determined in accordance with the method of accounting
9 allowed for federal income tax purposes. For the purpose of
10 determining gain or loss, the basis of property shall be the adjusted
11 basis used for federal income tax purposes, except as expressly
12 provided for under this act, but without a deduction for penalties,
13 fines, or economic benefits excepted pursuant to paragraph (2), or for
14 treble damages excepted pursuant to paragraph (3) of subsection b. of
15 this section.

16 A taxpayer's net gain or loss on the sale, exchange or other
17 disposition of a share of an S corporation shall be calculated by
18 increasing the adjusted basis of the share by an amount equal to the
19 shareholder's net losses and deductions in respect of the share allowed
20 and deducted from income for federal income tax purposes, not
21 including any personal net operating loss deductions, to the extent that
22 such net losses were not offset by the taxpayer's pro rata share of S
23 corporation income otherwise subject to taxation pursuant to
24 subsection p. of this section in respect of another S corporation,
25 subject to rules of priority and assignment determined by the director.

26 For the tax year 1976, any taxpayer with a tax liability under this
27 subsection, or under the "Tax on Capital Gains and Other Unearned
28 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
29 to payment of an amount greater than the amount he would have paid
30 if either return had covered all capital transactions during the full tax
31 year 1976; provided, however, that the rate which shall apply to any
32 capital gain shall be that in effect on the date of the transaction. To the
33 extent that any loss is used to offset any gain under P.L.1975, c.172,
34 it shall not be used to offset any gain under the "New Jersey Gross
35 Income Tax Act," N.J.S.54A:1-1 et seq. et seq.

36 The term "net gains or income" shall not include gains or income
37 derived from obligations which are referred to in clause (1) or (2) of
38 N.J.S.54A:6-14 of this act or from securities which evidence
39 ownership in a qualified investment fund as defined in section 2 of
40 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income"
41 shall not include gains or income from transactions to the extent to
42 which nonrecognition is allowed for federal income tax purposes. The
43 term "sale, exchange or other disposition" shall not include the
44 exchange of stock or securities in a corporation a party to a
45 reorganization in pursuance of a plan of reorganization, solely for
46 stock or securities in such corporation or in another corporation a

1 party to the reorganization and the transfer of property to a
2 corporation by one or more persons solely in exchange for stock or
3 securities in such corporation if immediately after the exchange such
4 person or persons are in control of the corporation. For purposes of
5 this clause, stock or securities issued for services shall not be
6 considered as issued in return for property.

7 For purposes of this clause, the term "reorganization" means:

8 (i) A statutory merger or consolidation;

9 (ii) The acquisition by one corporation, in exchange solely for all
10 or part of its voting stock (or in exchange solely for all or a part of the
11 voting stock of a corporation which is in control of the acquiring
12 corporation) of stock of another corporation if, immediately after the
13 acquisition, the acquiring corporation has control of such other
14 corporation (whether or not such acquiring corporation had control
15 immediately before the acquisition);

16 (iii) The acquisition by one corporation, in exchange solely for all
17 or part of its voting stock (or in exchange solely for all or a part of the
18 voting stock of a corporation which is in control of the acquiring
19 corporation), of substantially all of the properties of another
20 corporation, but in determining whether the exchange is solely for
21 stock the assumption by the acquiring corporation of a liability of the
22 other, or the fact that property acquired is subject to a liability, shall
23 be disregarded;

24 (iv) A transfer by a corporation of all or a part of its assets to
25 another corporation if immediately after the transfer the transferor, or
26 one or more of its shareholders (including persons who were
27 shareholders immediately before the transfer), or any combination
28 thereof, is in control of the corporation to which the assets are
29 transferred;

30 (v) A recapitalization;

31 (vi) A mere change in identity, form, or place of organization
32 however effected; or

33 (vii) The acquisition by one corporation, in exchange for stock of
34 a corporation (referred to in this subclause as "controlling
35 corporation") which is in control of the acquiring corporation, of
36 substantially all of the properties of another corporation which in the
37 transaction is merged into the acquiring corporation shall not
38 disqualify a transaction under subclause (i) if such transaction would
39 have qualified under subclause (i) if the merger had been into the
40 controlling corporation, and no stock of the acquiring corporation is
41 used in the transaction;

42 (viii) A transaction otherwise qualifying under subclause (i) shall
43 not be disqualified by reason of the fact that stock of a corporation
44 (referred to in this subclause as the "controlling corporation") which
45 before the merger was in control of the merged corporation is used in
46 the transaction, if after the transaction, the corporation surviving the

1 merger holds substantially all of its properties and of the properties of
2 the merged corporation (other than stock of the controlling
3 corporation distributed in the transaction); and in the transaction,
4 former shareholders of the surviving corporation exchanged, for an
5 amount of voting stock of the controlling corporation, an amount of
6 stock in the surviving corporation which constitutes control of such
7 corporation.

8 For purposes of this clause, the term "control" means the
9 ownership of stock possessing at least 80% of the total combined
10 voting power of all classes of stock entitled to vote and at least 80%
11 of the total number of shares of all other classes of stock of the
12 corporation.

13 For purposes of this clause, the term "a party to a reorganization"
14 includes a corporation resulting from a reorganization, and both
15 corporations, in the case of a reorganization resulting from the
16 acquisition by one corporation of stock or properties of another. In
17 the case of a reorganization qualifying under subclause (i) by reason
18 of subclause (vii) the term "a party to a reorganization" includes the
19 controlling corporation referred to in such subclause (vii).

20 Notwithstanding any provisions hereof, upon every such exchange
21 or conversion, the taxpayer's basis for the stock or securities received
22 shall be the same as the taxpayer's actual or attributed basis for the
23 stock, securities or property surrendered in exchange therefor.

24 d. Net gains or net income derived from or in the form of rents,
25 royalties, patents, and copyrights.

26 e. Interest, except interest referred to in clause (1) or (2) of
27 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
28 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
29 extent provided in that section .

30 f. Dividends. "Dividends" means any distribution in cash or
31 property made by a corporation, association or business trust that is
32 not an S corporation, (1) out of accumulated earnings and profits, or
33 (2) out of earnings and profits of the year in which such dividend is
34 paid and any distribution in cash or property made by an S
35 corporation, as specifically determined pursuant to section 16 of
36 P.L.1993, c.173 (C.54A:5-14).

37 The term "dividends" shall not include distributions paid by a
38 qualified investment fund as defined in section 2 of P.L.1987, c.310
39 (C.54A:6-14.1), to the extent provided in that section.

40 g. Gambling winnings.

41 h. Net gains or income derived through estates or trusts.

42 i. Income in respect of a decedent.

43 j. Amounts distributed or withdrawn from an employee trust
44 attributable to contributions to the trust which were excluded from
45 gross income under the provisions of chapter 6 of Title 54A of the
46 New Jersey Statutes and pensions and annuities except to the extent

1 of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the
2 provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41),
3 P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17
4 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14,
5 P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22
6 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
7 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
8 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5
9 (C.43:13-37.5).

10 k. Distributive share of partnership income.

11 l. Amounts received as prizes and awards, except as provided in
12 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

13 m. Rental value of a residence furnished by an employer or a rental
14 allowance paid by an employer to provide a home.

15 n. Alimony and separate maintenance payments to the extent that
16 such payments are required to be made under a decree of divorce or
17 separate maintenance but not including payments for support of minor
18 children.

19 o. Income, gain or profit derived from acts or omissions defined
20 as crimes or offenses under the laws of this State or any other
21 jurisdiction.

22 p. Net pro rata share of S corporation income.

23 (cf: P.L.1993, c.173, s.9)

24

25 9. N.J.S.54A:9-6 is amended to read as follows:

26 54A:9-6. Additions to tax and civil penalties. (a) Failure to file
27 tax return. In case of failure to file a tax return under this act on or
28 before the prescribed date (determined with regard to any extension of
29 time for filing), unless it is shown that such failure is due to reasonable
30 cause and not due to willful neglect, there shall be added to the
31 amount required to be shown as tax on such return such amount as is
32 required under the State Tax Uniform Procedure Law, R.S. 54:48-1
33 et seq. For this purpose, the amount of tax required to be shown on
34 the return shall be reduced by the amount of any part of the tax which
35 is paid on or before the date prescribed for payment of the tax and by
36 the amount of any credit against the tax which may be claimed upon
37 the return.

38 (b) Deficiency due to negligence. If any part of a deficiency is due
39 to negligence or intentional disregard of this act or rules or regulations
40 hereunder (but without intent to defraud), there shall be added to the
41 tax an amount equal to 10% of the deficiency.

42 (c) Failure to file declaration or underpayment of estimated tax.
43 If any taxpayer fails to file a declaration of estimated tax or fails to pay
44 all or any part of an installment of estimated tax, he shall be deemed
45 to have made an underpayment of estimated tax. There shall be added
46 to the tax for the taxable year an amount at the rate as is required

1 under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.,
2 upon the amount of the underpayment for the period of the
3 underpayment but not beyond the 15th day of the fourth month
4 following the close of the taxable year. The amount of underpayment
5 shall be the excess of the amount of the installment which would be
6 required to be paid if the estimated tax were equal to 80% of the tax
7 (two-thirds of the tax for farmers referred to in subsection (e) of
8 section 54A:8-4) shown on the return for the taxable year (or if no
9 return was filed, of the tax for such year) over the amount, if any, of
10 the installment paid on or before the last day prescribed for such
11 payment. No underpayment shall be deemed to exist with respect to
12 a declaration or installment otherwise due on or after the taxpayer's
13 death.

14 (d) Exception to addition for underpayment of estimated tax. The
15 addition to tax under subsection (c) with respect to any underpayment
16 of any installment shall not be imposed if the total amount of all
17 payments of estimated tax made on or before the last date prescribed
18 for the payment of such installment equals or exceeds whichever of the
19 following is the lesser--

20 (1) The amount which would have been required to be paid on or
21 before such date if the estimated tax were whichever of the following
22 is the least--

23 (A) The tax shown on the return of the individual for the
24 preceding taxable year, if a return showing a liability for tax was filed
25 by the individual for the preceding taxable year and such preceding
26 year was a taxable year of 12 months, or

27 (B) An amount equal to the tax computed, at the rates applicable
28 to the taxable year, on the basis of the taxpayer's status with respect
29 to his personal exemptions for the taxable year, but otherwise on the
30 basis of the facts shown on his return for, and the law applicable to,
31 the preceding taxable year, or

32 (C) An amount equal to 80% of the tax for the taxable year
33 (two-thirds of the tax for farmers referred to in subsection (e) of
34 section 54A:8-4) computed by placing on an annualized basis the
35 income for the months in the taxable year ending before the month in
36 which the installment is required to be paid. For purposes of this
37 subparagraph, the income shall be placed on an annualized basis by--

38 (i) Multiplying by 12 (or, in the case of a taxable year of less than
39 12 months, the number of months in the taxable year) the income for
40 the months in the taxable year ending before the month in which the
41 installment is required to be paid,

42 (ii) Dividing the resulting amount by the number of months in the
43 taxable year ending before the month in which such installment date
44 falls, and

45 (iii) Deducting from such amount the deductions for personal
46 exemptions allowable for the taxable year (such personal exemptions

1 being determined as of the last date prescribed for payment of the
2 installment); or

3 (2) An amount equal to 90% of the tax computed, at the rates
4 applicable to the taxable year, on the basis of the actual income for the
5 months in the taxable year ending before the month in which the
6 installment is required to be paid.

7 (e) Deficiency due to fraud. If any part of a deficiency is due to
8 fraud, there shall be added to the tax an amount equal to 50% of the
9 deficiency. This amount shall be in lieu of any other addition to tax
10 imposed by subsection (a) or (b).

11 (f) Nonwillful failure to pay withholding tax. If any employer,
12 without intent to evade or defeat any tax imposed by this act or the
13 payment thereof, shall fail to make a return and pay a tax withheld by
14 him at the time required by or under the provisions of section 54A:7-4,
15 such employer shall be liable for such tax and shall pay the same
16 together with interest thereon and the addition to tax provided in
17 subsection (a), and such interest and addition to tax shall not be
18 charged to or collected from the employee by the employer. The
19 director shall have the same rights and powers for the collection of
20 such tax, interest and addition to tax against such employer as are now
21 prescribed by this act for the collection of tax against an individual
22 taxpayer.

23 (g) Willful failure to collect and pay over tax. Any person
24 required to collect, truthfully account for, and pay over the tax
25 imposed by this act who willfully fails to collect such tax or truthfully
26 account for and pay over such tax or willfully attempts in any manner
27 to evade or defeat the tax or the payment thereof, shall, in addition to
28 other penalties provided by law, be liable to a penalty equal to the total
29 amount of the tax evaded, or not collected, or not accounted for and
30 paid over. No addition to tax under subsection (b) or (c) shall be
31 imposed for any offense to which this subsection applies.

32 (h) Failure to file certain information returns. In case of each
33 failure to file a statement of a payment to another person, required
34 under authority of subsection (c) of section 54A:8-6 (relating to
35 information at source, including the duplicate statement of tax
36 withheld on wages) on the date prescribed therefor (determined with
37 regard to any extension of time for filing), unless it is shown that such
38 failure is due to reasonable cause and not to willful neglect, there shall,
39 upon notice and demand by the director and in the same manner as tax,
40 be paid by the person so failing to file the statement, a penalty of \$2.00
41 for each statement not so filed, but the total amount imposed on the
42 delinquent person for all such failures during any calendar year shall
43 not exceed \$2,000.00.

44 (i) Additional penalty. Any person who with fraudulent intent
45 shall fail to pay, or to deduct or withhold and pay, any tax, or to make,
46 render, sign or certify any return or declaration of estimated tax or to

1 supply any information within the time required by or under this act,
2 shall be liable to penalty of not more than \$5,000.00, in addition to any
3 other amounts required under this act, to be imposed, assessed and
4 collected by the director. The director shall have the power, in his
5 discretion, to waive, reduce or compromise any penalty under this
6 subsection.

7 (j) Additions treated as tax. The additions to tax and penalties
8 provided by this section shall be paid upon notice and demand and
9 shall be assessed, collected and paid in the same manner as taxes and
10 any reference in this act to income tax or tax imposed by this act, shall
11 be deemed also to refer to the additions to tax and penalties provided
12 by this section. For purposes of section 54A:9-2, this subsection shall
13 not apply to:

14 (1) Any addition to tax under subsection (a) except as to that
15 portion attributable to a deficiency;

16 (2) Any addition to tax under subsection (e); and

17 (3) Any additional penalty under subsection (i).

18 (k) Determination of deficiency. For purposes of subsections (b)
19 and (c), the amount shown as the tax by the taxpayer upon his return
20 shall be taken into account in determining the amount of the deficiency
21 only if such return was filed on or before the last day prescribed for
22 the filing of such return, determined with regard to any extension of
23 time for such filing.

24 (l) Person defined. For purposes of subsections (f), (g), (h) and
25 (i), the term person or employer includes an individual, corporation or
26 partnership or an officer or employee of any corporation (including a
27 dissolved corporation) or a member or employee of any partnership,
28 who as such officer, employee, or member is under a duty to perform
29 the act in respect of which the violation occurs.

30 m. There shall be added to the tax due for a taxable year a penalty
31 for withdrawal of amounts from a medical savings account for any
32 purpose that is not an eligible expense as defined in section 1
33 of P.L. , c. (C.)(pending in the Legislature as this bill). The
34 penalty shall be equal to 10% of the amount of any withdrawal from
35 the account that is not an eligible expense.

36 (cf: P.L.1987, c.76, s.59)

37

38 10. This act shall take effect immediately and sections 6 through
39 9 shall apply to deductions for taxable years beginning on or after
40 January 1 next following enactment.

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45 Establishes certain standards and provides certain tax advantages for
46 medical savings accounts established in New Jersey.